

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

MICHAEL ROBERTS

v.

ALTAIR LINES S.A.
(referred to in Complaint
as M/V SHINANO REEFER *in personam*)

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CIVIL ACTION NO. 05-454 -GMS

**BRIEF IN SUPPORT OF DEFENDANT'S
UNCONTESTED MOTION FOR SUMMARY JUDGMENT**

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**D.I. 6
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one or more shore-based portable truck cranes and crane operators to assist Murphy in the discharge of cargo from the M/V SHINANO REEFER during the ship's call at the port of Wilmington from June 29 through July 1, 2003.

Defendant Altair's investigation has further revealed that during the cargo operation in question the crane in use was owned by Active and operated by Active and/or stevedore Murphy Marine Services, Inc. In these circumstances it was Active who was responsible for the safe operation, maintenance and control of the crane that plaintiff alleges was involved in his alleged accident of June 30, 2003.

Rule 14(a) of the Federal Rules of Civil Procedure provides in pertinent part as follows:

Any time after the commencement of the action, a defending party, as a third-party plaintiff, may cause a Summons and Complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claims against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten (10) days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action.

In the event that plaintiff's allegations are proven to be true at trial, said allegations being specifically denied by Altair, then defendant Altair is entitled to full indemnity and/or contribution from Active Crane Rentals, Inc. Accordingly, Active Crane Rentals, Inc. is, or may be liable to defendant Altair Lines for all or part of the plaintiff's claims in the captioned matter. In these circumstances, defendant Altair is entitled to file a Third-Party Complaint against proposed Third-Party Defendant Active Crane Rentals, Inc. in accordance with Federal Rules of Civil Procedure 14(a) and (c).

This motion is unopposed. Counsel for plaintiff has agreed not to oppose or object to the joinder of Active Crane Rentals, Inc. as a Third-Party Defendant.

III CONCLUSION

In accordance with the foregoing authority, defendant Altair Lines S.A. respectfully requests this Honorable Court to grant leave to file and serve the attached Third-Party Complaint against Active Crane Rentals, Inc.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

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